IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3951 OF 2003

Vijay Narayan Bhambure — Petitioner

versus

M/s.Dalal Moti MaCDONALD
(formerly known as M/s.Dalal
Consultants & Engrs. Ltd) & anr. — Respondents

WITH
WRIT PETITION NO.5129 OF 2002

V.N.Bhambure — Petitioner

versus

M/s.Dalal Moti Macdonald
and another — Respondents

WITH
LETTERS PATENT APPEAL NO.325 of 2000

M/s.Dalal Consultants and
Engineers Pvt. Ltd. — Appellant

versus

V.N.Bhambure and another — Respondents

V.P.Sawant as Amicus Curaie
J.P.Cama, adv. for R-1.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, J.

DATE : 3rd November 2004

ORAL JUDGEMENT (PER : S.C.DHARMADHIKARI, J.) :-

1. These petitions and Letters Patent Appeal raise identical issues and were heard together. They are being disposed of by a common judgement. Writ Petition No.3951 of 2003 prays for quashing and setting aside the findings of 9th Labour Court, Mumbai dated 10th March 2003 and also prays for an order and direction to respondent no.1 to deposit all the dues including Gratuity, Local Conveyance and Interest on the total dues. This is a petition filed by Vijay Narayan Bhambure. Writ Petition No.5129 of 2002 is also filed by Vijay Narayan Bhambure impugning the order dated 21st June 2002 passed by 9th Labour Court, Mumbai in Application (IDA) No.189 of 2001. Letters Patent Appeal is filed by Dalal Consultants and Engineers Private Limited challenging the judgement and order of learned Single Judge of this Court dated 22nd September 2000 in Writ Petition No.2951 of 1995. By this order, the writ petition has been dismissed. The said writ petition challenges the award made by Labour Court on 22nd February 1995 holding that V.N.Bhambure is a Workman and his termination is contrary to law, and, therefore, he is entitled to reinstatement with full back wages and continuity. Mr.Bhambure hereinafter will be referred to as the Petitioner whereas M/s.Dalal Consultants and Engineers Pvt. Ltd. as Company.

2. It appears that the petitioner joined the services of the company as a Senior Pipeline Draftsman from 1st February 1975 in the scale of pay of Rs.1300-125-2000. He was informed at the time of joining the service that yearly increments would be granted to him on the basis of efficiency and as per the general decision taken with regard to the staff of company. It is his case that by their letter dated 3rd February 1981 company expressed satisfaction of the progress shown by him and designated him as Squad Leader w.e.f. 4th September 1981. According to him, this was merely redesignation and he continued to do the same work as before namely preparing and compiling pipeline lay outs and incidentally guiding the junior draftsmen on request. It appears that there was a change in the management some time in June 1982 but the services of petitioner were taken over by the new management. In other words, the employees including the petitioner continued from the dates of their initial appointment. Under the new management as well the petitioner performed the same duties and did the same work. The nature of duties have been elaborately set out in the order of Labour Court as well as Single Judge and we do not wish to go into them.

3. It appears that the petitioner was served with an inter office note dated 13th April 1984 requiring him to report to Mr.J.D.Udeshi or M/s.Dalal Project Services from where he was made to work on Gwalior Rayon Project. He protested against the assignment pointing out that the same was beyond contract of service with the company dated 1st June 1982. According to him, as per this contract, he was required to work in any shift and in any department or the work at sight managed by the company. His services cannot be made available to totally different company M/s.Dalal Projects Service Pvt. Ltd.. He submitted that two companies are distinct entities. His services were illegally lent to M/s.Dalal Project Service for the period 13th April 1984 to 15th October 1985. An oral protest was lodged by employees including petitioner. It appears that the company illegally withheld petitioner's general increment for the year 1985. It is his case that he was not informed that his performance was not satisfactory. On the contrary, workmen junior to him were granted increments. During his absence on 10th December 1985 the company illegally deducted his salary, HRA and conveyance allowance. On account of this, petitioner protested/submitted

representation on 5th November 1985. No reply was given to this representation nor his wages were paid. While he was agitating this issue continuously, the company instead of making payment, illegally terminated his services by letter dated 2nd April 1986. No reasons were assigned for the termination. No show cause notice or charge sheet was issued. His record was unblemished and he had put in more than 10 years' continuous service with the company. According to the petitioner, the termination amounts to retrenchment. The retrenchment being illegal, inasmuch as there being no compliance with Section 25F of the Industrial Disputes Act, 1947 R/W Rule 81 of the Industrial Disputes (Bombay) Rules, 1957, the termination was wholly illegal and he was entitled to be reinstated in service with continuity and full back wages as well as other legal dues and benefits.

4. It appears that conciliation proceedings failed, and, therefore, the dispute was referred for adjudication to the Labour Court. The Labour Court registered it as Reference (IDA) No.446 of 1987. After giving full opportunity to the petitioner as well as company to file statements, submit documents and lead evidence, the Presiding Officer of the Labour Court made an award dated

22nd February 1995 directing company to reinstate the petitioner in service with full back wages and continuity from 3rd April 1986. This award was impugned by the company in Writ Petition No.2951 of 1995. By the judgement and order of learned Single Judge dated 22nd September 2000, the said writ petition came to be dismissed.

5. It appears that during pendency of the above petition, order was passed retiring the petitioner w.e.f. 14th October 1998. It also appears that during pendency of the writ petition the company was directed to deposit the sum of back wages as a condition of interim stay of the order of Labour Court. An order to that effect was passed on 9th August 1995.

6. Writ Petition No.5129 of 2002 arises out of proceedings initiated by the petitioner being Recovery Application (IDA) No.189 of 2001. The said application was filed on 2nd May 2001. Petitioner prayed that his retiral dues and differential accumulated salary should be paid by the company. It appears that this application was not being decided and the petitioner had to approach this Court by instituting Writ Petition No.408 of 2002. As a result of the order passed by this Court on 22nd January 2002 hearing of the

application filed by the petitioner was expedited.

7. It appears that thereafter pleadings were completed in the Recovery Application. The recovery application was heard by the Labour Court. The Labour Court by an order dated 21st June 2002 dismissed recovery application on the ground that it is not maintainable. It is this order of dismissal of the recovery application which is impugned in Writ Petition No.5129 of 2002.

8. Writ Petition No.3951 of 2003 is filed by the petitioner to challenge the order dated 10th march 2003 in Recovery Application (IDA) No.189 of 2001. That is an order by which the Presiding Officer of the 9th Labour Court, Mumbai forwarded his findings to this Court in compliance of order passed by this Court in Writ Petition No.5129 of 2002. The Presiding Officer held that the petitioner is entitled to receive Rs.3,93,264/- inclusive of retiral dues and other emoluments along with interest @ 8% p.a. from 14th October 1998 till the realisation together-with costs of Rs.10,000/-. It appears that this Court passed an order in Writ Petition No.5129 of 2002 on 12th December 2002 holding that the issue of

maintainability should be treated as preliminary objection and the Court should compute the amount in accordance with provisions of Section 33(C)(2) of Industrial Disputes Act, 1947. Thus, the entitlement was upheld to the extent indicated above.

9. In the light of the aforesaid, what survives for consideration is the grievance of company that petitioner is not a workman and the complaint of petitioner that the Labour Court ought to have granted Application No.189 of 2001 in its entirety.

10. It appears that the petitioner was prosecuting this matter in person. This Court in order to do complete justice appointed Mr.V.P.Sawant, learned counsel, as amicus curiae. He was appointed to assist this Court in appreciating grievances of petitioner. We are thankful for the valuable assistance rendered by him. Mr.Cama, learned senior counsel appeared for company. He was also heard at length. Shri Sawant as well Shri Cama assisted us in going through a rather bulky record. An attempt was also made by them to put an end to this matter. However, the petitioner insisted for payment of all claims. Thus, there is no settlement.

11. First the Letters Patent Appeal. In our view, the learned Single Judge was not in any error in rejecting the writ petition. The learned Single Judge has considered the submission of the company that the petitioner could not have been held to be a workman on account of duties assigned to him. In our view, the designation as "Squad Leader" on the own showing of company is a redesignation w.e.f. 4th September 1981. It is not possible to accept the contention that from this date the nature of work and duty assigned to the petitioner changed, inasmuch as, he was getting the work done by his subordinates. In our view, the Labour Court as well as the learned Single Judge did not commit any error nor their conclusions can be said to be perverse. The Presiding Officer has considered entire material. In an elaborate judgement delivered on 22nd February 1995, the Presiding Officer has held that the petitioner has not signed on any leave application as person recommending leave. Although his salary was exceeding Rs.1,600/- p.m., the company was unable to demonstrate that he was performing administrative and supervisory duties. The finding of fact recorded by the Presiding Officer and confirmed by the Single Judge in writ

petition cannot be interfered with by us. The above finding is based on materials including deposition of witnesses. The Court has held that it cannot be said that the workman was working in a way to improve the quality and efficiency of other draftsmen. The Presiding Officer in a lenthy and elaborate judgement has given consideration to this aspect and, therefore, there is no substance in the contentions of the company. The findings of fact cannot be reappreciated and reappraised by us. Ultimately, we cannot substitute our views in place of the Labour Court by undertaking such an exercise. That apart, on account of further developments the company cannot be permitted to urge that petitioner is not a workman. Letters Patent Alppeal, therefore, deserves to be dismissed.

12. Now, coming to the entitlement of petitioner workman. In Application (IDA) No.189 of 2001 the petitioner workman applied for payment of following sums :-

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Rs.29,54,853-00	Total salary from 3.4.86 (date of termination) to 14.10.98 (date of retirement.)

Less :	Rs. 87,333-00	Withdrawn from back wages deposited on 21.11.95 with 1st Labour Court.
	Rs.28,67,520-00	
Less :	Rs. 2,62,000-00	Back wages deposited with 1st Labour Court on 9.12.95.
	Rs.26,05,520-00	
Less :	Rs. 2,39,000-00	Wages paid u/s 17-B from 3.4.1986 to 30.9.98.
	Rs.23,66,520-00	

B) TOTAL RETIRMENTAL DUES FROM THE COMPANY ON RETIREMENT DATE I.E. ON 14.10.1998 :-

	Rs. 3,45,132-00	Leave salary for 12 years considering last salary drawn Rs.28,761/- per month (i.e. from 3.4.1986 to 14.10.1998).
Add :	Rs. 3,74,435-00	Accumulated P.F. (Company's contribution).
	Rs. 7,19,567-00	Total dues from the company on retirement date i.e. 14.10.98.
	Rs.23,66,520-00	(A) Differential salary due from the company.
Add :	Rs. 7,19,567-00	(B) Total retiral due from the company.
	Rs.30,86,087-00	Total dues from the Company.

Total Rupees thirty Lakhs Eighty Six Thousand Eighty Seven only.

Thus, it is clear that petitioner applied for recovery of his retiral dues and differential accumulated salary as according to him company had not paid him full back wages as per settlements signed between Union and it from time to time.

13. This Court directed the Labour Court to remit findings on merits of the claims. Strictly speaking, Writ Petition No.5129 of 2002 worked itself out completely by order dated 12th December 2002. Now what remains for consideration is whether any interference is necessary in the findings remitted to this Court by the Labour Court vide order dated 10th March 2003.

14. The Labour Court in the order has adverted to all the aspects. It had also held that the contention of petitioner to treat him on par with another employee namely Mr.K.P.Prabhu cannot be accepted. Status of that employee was not adjudicated by a competent Court and in the absence of such scrutiny it would not be proper to calculate the benefits payable to the petitioner on par with Mr.K.N.Prabhu. However, this Court directed the 9th Labour Court, Mumbai to compute the amount payable to the petitioner

in pursuance of the award dated 22nd February 1995 inclusive of retiral dues and other emoluments and remit it's findings to this Court. Of course, this was without prejudice to the Letters Patent Appeal. Now, that we have disposed off the Letters Patent appeal, it is necessary to find out whether in our writ jurisdiction we should interfere with findings of the Presiding Officer of Labour Court remitted to this Court.

15. The petitioner-applicant has been entitled to be paid Rs.3,93,264/- along with interest @ 8% p.a. from 14th October 1998 till its realisation and costs of Rs.10,000/-. The company contended that if he had continued in employment, he would have earned total sum of Rs.9,29,983/- till the date of retirement. The company has deposited back wages in the Labour Court and thereafter petitioner was paid salary every month till the date of his retirement. It contended that total sum of Rs.9,29,983/- can be paid over to him after deducting amounts already paid. This according to them is Rs.3,14,190/-. It is contended by the company that as per this Court's directions, it has already deposited Rs.5.00 lakh which includes arrears of legal dues, gratuity and other benefits. However, according to the

petitioner, these figures are incorrect and his total entitlement is Rs.30,86,087/-.

16. We have perused the findings of Labour Court in Application (IDA) No.189 of 2001. The Labour Court has adverted to the examination-in-chief (Exhibit U-11A) of the petitioner and his cross examination on behalf of company. The company also adduced evidence of one Mr.R.A.Fernandes and he was cross examined by the petitioner in person. The Labour Court has heard petitioner in person and the advocate for company at length.

17. The petitioner's contentions have been referred to in detail. The Labour Court in para 8 of the order has recorded finding of fact that Mr.K.N.Prabhu was not proved to be a counter part of petitioner. The Labour Court has observed that Mr.K.N.Prabhu has not been examined.

18. Thereafter the Court below has gone into the computation made by the petitioner for the period 3rd April 1986 to 14th October 1988. The Court below has recorded the admission of petitioner that his calculation as far as HRA, LTA and Medical Allowance and Bonus is concerned, is not correct. Thus, petitioner himself admitted that the calculations shown by him are not correct.

The admissions are recorded in paras 9 and 10 of the impugned judgement. The Court below has considered the claim of wages and benefits in accordance with four settlements. The Court below has also recorded a finding that on the basis of copy of settlement of the year 1989 all that the petitioner can be said to be entitled to is wages admissible to Senior Draftsman-B. The Court below has considered the claim for conveyance allowance. It has recorded a fact that gratuity and back wages are already paid. The Court below found fault with the petitioner and held that he has given three different figures while calculating wages, benefits and other emoluments. The Court below has accepted the figures of the company which are based upon settlements. The Court below has held that the terms of settlement are binding on the petitioner and he cannot claim the amounts over and above the same. Reimbursement of medical expenses was denied because of non production of bills but on account of statement made by the company's advocate before the Labour Court, an amount of Rs.32,193/- was held to be payable. Thereafter the claim of LTA has been considered and a sum of Rs.46,881/- was held to be payable under this head.

19. After considering all these claims a total amount of Rs.3,93,264/- has been computed and held to be payable. Considering the fact that Rs.5.00 lakh have been deposited, we are of the view that the findings remitted by the Presiding Officer, 9th Labour Court, Mumbai need not be interfered with and we should not allow any claim over and above what has been awarded in favour of petitioner.

20. Ultimately, findings of fact on the basis of materials produced are not liable to be interfered with in our jurisdiction under Article 226 of Constitution of India. Moreover, the findings are not demonstrated as perverse or vitiated by any error apparent on the face of record. Therefore, there is no substance in the contentions of Mr.Sawant appearing for petitioner.

21. At this stage learned counsel appearing for company submitted that the company has no objection, if the sum of Rs.5.00 lakh deposited in this Court is paid over to the petitioner. Mr.Cama also makes a statement that a further sum of Rs.92,000/- (Rs.Ninety two thousand only) remains to be deposited and paid over to the petitioner. The said amount of Rs.92,000/- which

includes claim of interest awarded by the Labour Court and costs should be paid, if not already paid, within a period of four weeks from today. Needless to observe that the petitioner workman would be entitled to withdraw the amount of Rs.5.00 lakh deposited in this Court.

22. We pass following order :-

A) Letters Patent Appeal No.325 of 2000 is dismissed;

B) Writ Petition No.5129 of 2002 does not survive whereas Writ Petition No.3951 of 2003 is dismissed;

C) Petitioner is at liberty to withdraw the sum of Rs.5.00 lakh (Rs.Five lakh only);

D) The company is directed to pay a sum of Rs.92,000/- (Rs.Ninety two thousand only) which constitutes claim of interest on the amount awarded by Labour Court and costs, within a period of four weeks from the date of this order;

E) Certified copy expedited.

22. In the circumstances there shall be no order as to costs.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)